IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Civil Misc. Writ Petition No. 191 (M/S) of 2006

Jaswant Singh S/o Sri Nain Singh
R/o Village Simlas Grant
Pargana Parwa Doon
District Dehradun ...Petitioner

Versus

1. District Judge, Dehradun
2. Smt. Sumitra Devi Widow of Late Sri Khushi Ram
   R/o Village Simlas Grant
   Pargana Parwa Doon
   District Dehradun ....Respondents

Sri Vinod Sharma, learned counsel for the petitioner
Sri Nand Prasad, learned Standing counsel for the State.

Hon'ble B.C. Kandpal,J.

By way of this petition, the petitioner has sought the relief for setting aside the order dated 06.12.2005 passed by the District Judge, Dehradun in Testamentary Suit No. 34 of 2001. It has also been prayed that the petitioner be permitted to adduce the evidence before the court below in support of his case.

2. Heard learned counsel for the petitioner and perused the record.

3. The record reveals that this Court on 08.04.2005 directed that the matter pending before the District Judge, Dehradun shall be disposed of expeditiously as possible, preferably within four months.

4. The petitioner has filed the order sheet of the case No. 4 of 2003 Jawant Singh Vs Smt. Sumitra Devi maintained by the court below. It shows that after the

order was passed by this Court, the copy of the order was produced before the court below on 19th April, 2005. Thereafter, the date was fixed as 09.05.2005. On that day, the Presiding Officer was on leave, therefore, the next date was fixed as 20th May, 2005. On that day, an application for adjournment was filed by the petitioner, therefore, 28th July, 2005 was fixed. The order sheet further shows that anyhow, the matter could not be taken up on 28th July, 2005 as there is nothing on the record which may suggest that the matter was in fact taken up on 28th July, 2005 and it appears that thereafter it is not the fault of the plaintiff/petitioner to linger on the matter by adopting the delaying tactics before the court. However, the learned District Judge, Dehradun vide order dated 06.11.2005 closed the evidence of the plaintiff/petitioner which cannot be said to be justified.

5. In view of the aforesaid circumstances, the learned court below before closing the evidence, plaintiff/petitioner should have given him a reasonable opportunity but on the perusal of the order sheet maintained by the court below it does not appear that the plaintiff/petitioner was given any reasonable opportunity for producing the evidence in support of his case. Therefore, to my mind, the evidence of the plaintiff/petitioner has been closed without affording any reasonable opportunity to him which cannot be said to be sustainable in the eye of law.

6. In view of the aforesaid circumstances, I set aside the order dated 06.12.2005 passed by the District Judge, Dehradun by which the evidence of the plaintiff/petitioner has been closed.

7. The writ petition is allowed.

8. However, learned District Judge, Dehradun is directed to provide an opportunity to the plaintiff/petitioner to produce the evidence in support of his case. It is desirable that the plaintiff/petitioner shall not seek any unnecessary adjournment in the case and the court below also shall not grant any adjournment without satisfying itself.

(B.C. Kandpal. J.)

04.03.2006
ASWAL